IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2327 OF 2004

The Registrar, University of)
Mumbai, Fort, Mumbai-400 032.)..Petitioner

Versus

1.Kum.Lata Bhor)
C/o.Satish Kirana Stores,)
Ghatla Village, Chembur,)
Mumbai-400 071.)
2.Shri M.L. Harpale, Member,)
Industrial Court, having)
His office at New)
Administrative Building,)
Bandra (East),Mumbai-400 051.)..Respondents

Mr.P.M. Palshikar, for the petitioner.

Mr. U.D. Bhat, for Respondents.

CORAM: F.I. REBELLO, J.
DATE : 10th September,2004

ORAL JUDGMENT:

1. Rule. By consent heard forthwith.

2. The petitioner University by the present action seeks to impugn the order of the Industrial Court dated September, 6, 2002 partly allowing the complaint and holding that the petitioners herein are guilty of unfair labour practice under Item 5 and 9 of Schedule IV of M.R.T.U. & P.U.L.P. Act and further directing the petitioners herein to issue fresh appointment letter to the complainant with continuity of service after expiry of six months period of service.

. It is contended on behalf of the petitioner that considering Section 59 of the Maharashtra University Act, 1994 the Industrial Court would have no jurisdiction as in the case of termination it is the Tribunal constituted under the

Maharashtra Universities Act, 1994 which alone would have jurisdiction in cases where the services of a teacher or other employee is dismissed or removed or his services are otherwise terminated or reduced in rank. It is pointed out that the respondent was appointed by letter dated 13th September, 1995 on purely temporary basis as junior typist-cum-clerk in the examination section for a period not exceeding six months. It is pointed out that therefore by efflux of time in the normal course on expiry of said period of six months the services of the petitioner herein would come to an end. It is pointed out that the respondent herein filed a complaint before the Labour Court being ULP No.169 of 1996 anticipating that the services will be terminated after 3rd April, 1996. The Labour Court was pleased to grant interim relief. Thereafter the complaint was withdrawn. The Labour Court extended the stay upto 24th June, 1996. The Complaint before the Industrial Court was filed on 25th June, 1996. In other words it is pointed out that as on 25th June, 1996 the respondent was no longer in service and consequently the Industrial Court would have no jurisdiction to entertain the complaint.

2. On the other hand on behalf of the respondents their learned Counsel contends that the petition has been filed belatedly i.e. nearly after two years of the order of the Industrial Court and that too,only after the respondent herein had taken proceedings by way of execution. It is further submitted that when the petition was filed before the Labour Court the petitioner was in service and the termination had not yet been taken place. In these circumstances the Labour Court had jurisdiction. Apart from that it is contended that the complaint before the Industrial Court was filed on 25th

June, 1996. The Industrial Court has recorded a finding that there has been no termination and in these circumstances the Industrial Court would have jurisdiction to entertain and dispose of the complaint. It is further pointed out that another learned Judge of this Court in the case of Satyawadi Ganpatrao Pimple & Ors. vs. Aruna Ganpatrao Narwade & Anr., 2000 (2) Mh.L.J. 322, dealing with the matter under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act has taken a view in so far as non-teaching staff is concerned that remedy of filing civil suit under Section 9 of the Civil Procedure Code is impliedly barred. At the outset it may be pointed out that on a careful perusal of the judgment and the ratio therein it will be clear that what was in issue before the learned Judge was whether the Civil Court and the Tribunal under the M.E.P.S. Act had concurrent jurisdiction. Any other passing observations made therein while answering the said issue cannot constitute to be ratio of that judgment.

3. With the above, we may consider the contention as now urged. It is no doubt true that there is delay on the part of the petitioner in moving this Court. The question, however, is whether on that count the petition ought to be dismissed. In the instant case the issue is whether the Industrial Court had jurisdiction. Proceedings in execution are pending. The petitioners herein can still raise the issue of want of jurisdiction on the ground that the order being a nullity and as the matter does not require investigation into new facts, but facts already are on record. In these circumstances in my opinion the petition cannot be dismissed on the ground of laches.

4. The question then is whether the contention as raised on behalf of the respondent can be accepted. My attention is invited to the judgment in the case of People's Welfare Society, Nagpur & Anr. v. Second Labour Court, Nagpur & Ors.,1998 (2) LL.N.185 wherein considering a similar question in the matter of apprehended termination of non-teaching staff the issue was answered as under:-

> "9.The employees involved in this petition are non-teaching employees. Such non-teaching employees could fall within the definition of workmen within the meaning of S.2(s) of the Industrial Disputes Act. Even in respect of Industrial Disputes Act they could not have moved the Courts under the said Act as S.59 of the Maharashtra Universities Act would then squarely cover the case of such individual employees in so far as termination of their services are concerned as set out in S.59 of the Maharashtra Universities Act. However, what is to be borne in mind is that the M.R.T.U. and P.U.L.P. Act for the first time by virtue of S.30(2) has conferred power on the Courts constituted under the Act to prevent an employer from terminating the services of employees falling within the definition of S.2(s) of the Industrial Disputes Act. Such a remedy is not provided for either in the Maharashtra Universities Act or in the Industrial Disputes Act and the M.R.T.U. and P.U.L.P. Act has been considered by the Apex Court in the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate reported in 1996 (1) L.L.N. 173, wherein

the Apex Court has held that the M.R.T.U. and P.U.L.P. Act is supplemental legislation to the Industrial Disputes Act. Section 30 of the M.R.T.U. and P.U.L.P. Act has for the first time given right in the form of remedy to a person who falls within the definition of S.2(s) of the Act to move the Court under the M.R.T.U. & P.U.L.P. Act to preempt his termination from service. Such a right is not traceable under S.59 of the Maharashtra Universities Act. On the contrary S..61 of the Maharashtra Unviersities Act it has been made clear that an Appeal filed will have to be rejected if it does not come within the predicates of S.59 of the Maharashtra Universities Act. Thus clearly the Tribunal will have no jurisdiction to decide a case of threatened dismissal or termination. Even otherwise it can be seen that the jurisdiction under the M.R.T.U. and P.U.L.P. Act is not totally ousted. It is only in the matter of dismissal, removal or where services are otherwise terminated or where an employees, is reduced in rank would a remedy be available to an aggrieved employee. In order matters pertaining to his conditions of services the remedy is not available under S.59 of the Maharashtra Universities Act. Thus there is no total ouster of jurisdiction in so far as Maharashtra Unviersities Act is concerned. If that be so it is not difficult to hold that even a case of threatened dismissal would not fall under S.59 of the Maharashtra Universities Act as the words used are "who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank." It is

only after such an event has taken place as stated earlier that the right of appeal is provided. In these circumstances I am of the opinion that the jurisdiction of the Labour Court is not ousted and to that extent the contention on behalf of the petitioners has to be rejected."

It is clear from that judgment therefore that once the services of non-teaching staff are terminated either by way of dismissal or termination or reduction in rank it is the School Tribunal alone which would have exclusive jurisdiction. If there is no termination then considering the provisions of M.R.T.U. & P.U.L.P. Act the Industrial Court on the ground of apprehended termination would still retain jurisdiction.

. My attention is also invited to the judgment of the learned Single Judge in Madhukar Baburao Achari v. Shikshak Smarak Sanstha & Anr., 2000 II C.L.R. 949, wherein the issue before the learned Single Judge was under the provisions of the Industrial Disputes Act and the jurisdiction of the Tribunal constituted under the Pune University Act. The learned Judge found that the Tribunal constituted under the provisions of the Pune University Act was a complete code by itself and the employees governed by the Act cannot travel beyond the parameters of the Act and whatever grievances the employees have, they will have to resolve them within the four corners of the Act. This judgment also clearly indicates that once the Tribunal is constituted under a Special enactment, a right is created and a forum is provided for adjudication and the remedy provided for enforcement in the matter covered by that Act it is the Tribunal under the Act which will have

jurisdiction.

5. Considering the above, the question then would be whether in the instant case it can be said that the Industrial Court had jurisdiction to entertain the complaint. In the first instance the respondent was given a letter of appointment on 23rd February, 1995. In that letter it was set out that the respondent would be considered for temporary appointment for a period not exceeding six months in the first instance and which was likely to be continued till selection subsequently. The petitioner did join services. Thereafter a fresh letter of appointment was issued on 13th September, 1995 that the petitioner was appointed purely on temporary basis for a period not exceeding six months with immediate effect. In other words the language was clear that the appointment was purely temporary and for a period not exceeding six months. There is also a clause that the services could be terminated before the expiry of six months without assigning any reason. Before the period of six months could expire the Respondent filed a complaint under the M.R.T.U. & P.U.L.P. Act being Complaint No.169 of 1996. On 3rd April, 1996 interim relief was granted and was continued upto 19th June, 1996 on which date the complaint filed was withdrawn to file a complaint before the Industrial Court. However, interim relief was continued till 24th June, 1996. The complaint before the Industrial Court was filed on 25th June, 1996. It is thus clear that it was the understanding of the respondent herself that the services will stand terminated with effect from 3rd April, 1996 in terms of letter of appointment dated 13th September, 1995 as can be seen from her application dated 1st July, 1996 moved before the Industrial Court for interim

relief. The respondent herself understood that her services would be terminated with effect from 3rd April, 1996. The respondent's services were thereafter continued pursuant to the interim order of the Labour Court. Continuation of service pursuant to interim order of Court does not confer any legal right on the employee as the continuation is purely pursuant to direction by the Labour Court. It could have been understood if the complaint had been filed on 24th June, 1996 itself in which can it may have still been possible to consider that as the complaint was filed based on apprehension of threatened termination the Industrial Court had jurisdiction. However, the complaint was filed on 25th June, 1996. The stay expired on 24th June, 1996. Once that be the case the services of the respondent No.1 stood terminated in terms of the letter of 13th September, 1995. Clearly therefore, there was a termination within the meaning of Section 59 of the Maharashtra Universities Act. The Industrial Court would have no jurisdiction to entertain the complaint. The contention as raised on behalf of the University will have to be accepted and the petition will have to be allowed on the ground of want of jurisdiction on the part of the Industrial Court to entertain the complaint.

6. The Respondent was proceeding before the Industrial Court bonafidely. No objection was raised by the petitioners herein to the jurisdiction of the Tribunal to entertain the complaint. In these circumstances on behalf of the University their learned Counsel makes a statement that if a petition is filed by the respondent within six weeks, then the University will not raise the ground of limitation and that the Tribunal considering the power under Section 59(2) can proceed to

condone the delay and hear the Appeal as filed. If the appeal is preferred within six weeks then the Tribunal considering that the respondent has been pursuing the matter from 1996 to dispose of the complaint within 3 months from the date of filing of the Appeal.

. With the above observations, Rule made absolute. No order as to costs.

Authenticated copy be supplied to the parties.

Certified copy expedited.

(F.I.REBELLO, J.)